

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	Potential Omnibus rule makings
)	NPRM 16-239
Amendment of Part 97 of the Commission's)	RM-11708
Amateur Radio Service Rules to Permit Greater)	RM-11759
Flexibility in Data Communications)	RM-11831
)	RM-11828
)	September 26, 2019

To: The Chief, Wireless Telecommunications Bureau
Via: Office of the Secretary

CLARIFICATION ADDENDUM TO
OPPOSITION REPLY COMMENT TO ARRL/SIDDALL EX PARTE 9/17/19

Janis Carson, AB2RA, long term ARRL member, Extra class licensee, pursuant to Section 1.405 of the Commission's Rules (47 C.F.R. §1.405), hereby respectfully request consideration of this Ex Parte notice and reply comments to 9/17/19 ARRL Ex Parte, via their representative, Dave Siddall FCC ID: 1091828798020.

https://ecfsapi.fcc.gov/file/1091828798020/ARRL%20FCC%20Docket%2016-239%2009_17_2019.pdf

This is a brief addendum to my comments dated 9/24/19:

https://ecfsapi.fcc.gov/file/1092523409086/%24SEPTEMBER_24_19_ARRLreplyFINAL.pdf

A. THE PIZZA RULE, AND WHY IT NEEDS REVISION IMMEDIATELY

I, and others, make reference to the so called “**Pizza Rule**”, a 1993 FCC document triggered by the ARRL regarding mostly 2 meter FM telephone interconnection (phone patch) voice practices at the time, which loosened the definitions of commercial content in 97.113. The FCC needs to revise this decision in the light of HF email misuse pointed out in multiple filings in RM-11708, NPRM 16-239, and RM-11831. I do not know of anyone else who has given the exact reference for this item, so here is the link to the original “Pizza Rule”:

<https://docs.fcc.gov/public/attachments/FCC-94-111A1.pdf>

Someone apparently asked the ARRL if it was OK to order a pizza employing a 2 meter FM auto-patch connection to the telephone lines. The ARRL and others wrote the FCC regarding some of these uses which might be considered commercial in nature. Please note that cell phones were not commonplace in 1993, and a 2 meter handheld radio was popular. Also note that AOL on dial up telephone lines was considered good internet access at the time. A land line frankly might have been a better choice than a handheld radio for a pizza order. The FCC responded with a MEMORANDUM OPINION AND ORDER, FCC-94-111A1, PR Docket No. 92-136 at the link above, from 1993, which is now obsolete and being used to justify bending 97.1 and 97.113a4 and 97.113a5 rules.

I was part of a group that recently filed an FCC complaint, Enforcement Bureau Ticket # 3184322; a heavily redacted version of this is in the last appendix pages of:

<https://ecfsapi.fcc.gov/file/10718632326911/July%2018%2C%202019%20Ex%20Parte%20Filing.pdf>

The first entries in that complaint show that simply ordering a pizza now has progressed to communications regarding the operation of an actual pizza restaurant, the pricing and marketing strategies, and other items. I will not go into the other personal material in that exchange, but the FCC should definitely read it, because it fails to meet “community standards”.

There is an RM-11708 filing by an unlicensed yacht owner using Winlink, Randal Evans, which the data above confirms is a common practice today:

<https://ecfsapi.fcc.gov/file/7521315143.pdf>

Please also read the lobbying efforts of a Winlink officer, Phil Sherrod, and an officer of the Seven Seas Cruising Association, which gave Randal Evans the filing instructions:

<http://www.sailnet.com/forums/general-discussion-sailing-related/111746-us-citizens-urged-support-fcc-rm-11708-a.html>

While not a Winlink incident, this news item regarding unlicensed use of amateur spectrum to coordinate a yacht race with six figure prizes is disturbing:

<https://www.sailingscuttlebutt.com/2019/01/21/maintaining-information-barrier/>

This news article is germane to discussions of appropriate content in 97.113.

The 1993 MEMORANDUM OPINION AND ORDER, FCC-94-111A1 says:

Specifically, Section 97.113 was amended to allow licensees to use amateur service frequencies to facilitate events such as races and parades, to support educational activities, to provide personal communications such as making appointments and ordering food, to collect data for the National Weather Service, and to provide assistance voluntarily even where there are other authorized radio services available.

Did the FCC intend to subsidize via amateur spectrum free HF email services for yachts, in competition with commercial services, on a “regular basis” 97.113(a)(5)?

Did the FCC intend to facilitate yacht races having a six figure prize?

Did the FCC intend for amateur frequencies to be used for downloads of commercial subscriptions to custom weather reports with optimum routing for yachts?

Or was it to facilitate legitimate public safety and service communications such as SKYWARN, which saves lives by reporting tornadoes?

Did the FCC intend this for school teachers using amateur radio to stimulate youngsters' interest in STEM subjects (while being paid), or for people to use it in a commercial yacht transport business?

To conflate these activities with the work of the Red Cross, Salvation Army, and other valid relief work using amateur radio is an insult to the good people that do that work. The FCC MUST revise Part 97.113 to correct this misuse. There should be ONLY ONE UNEQUIVOCAL STANDARD THAT APPLIES TO *ALL* AMATEUR OPERATORS.

This problem is definitely “in the scope” of the current RM-11708 and NPRM 16-239 proceedings based on ongoing public comments. Furthermore, the very basis for ARRL's petition is the need for spectrum and revision of rules is specifically for the purpose of “emergency

communications". It has now been established that there is more than legitimate relief work occurring, and before that request is granted, this needs to be resolved. The FCC should consider joining the EU and most of IARU region 3 in disallowing third party traffic, if technical approaches to regulating abuse of amateur spectrum cannot correct this situation. Legitimate emergency and relief communications would still be legal in IARU rules, in that case.

B. NEED FOR "PUBLIC" MONITORING IS DEMONSTRATED, & IN SCOPE

The reason these egregious and commercial abuses of amateur radio has not become public knowledge is because the "public" did not have the capacity to monitor these Over The Air (OTA) transmissions in the amateur spectrum for the past 20 years. While highlighting the need for enforcement by various government agencies, including the FCC, the fundamental principal for amateur radio is that it is self-enforcing due to the following FCC statement:

QUOTED FROM DA 13-1918:

The primary protection against exploitation of the amateur service and the enforcement mechanism in the amateur service is its self-regulating character... To ensure that the amateur service remains a non-commercial service and self-regulates, amateur stations must be capable of understanding the communications of other amateur stations.

Footnote 19: We note that a hallmark of enforcement in the amateur service is "self-policing," which depends on an amateur station hearing a message being able to determine whether message violate the amateur service rules. See, e.g., Waiver of Sections 97.80(b) and 97.114(b)(4) of the Amateur Rules to Permit the Retransmission of Third-Party Traffic in Certain Situations, Order, PR Docket No. 85-105, 59 Rad. Reg. (P & F) 1326, 1326 ¶ 2 (PRB 1986).

http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0918/DA-13-1918A1.pdf

The ARRL is in the process of organizing a "Volunteer Monitor" program. Hans-Peter Helfert has offered an OTA decoder for use by that program. It may NOT be available to rank and file amateurs, which is a problem. I like and trust Riley Hollingsworth, who currently heads the program. When he retires, will the ARRL (who has advocated heavily for Winlink) be as diligent in eliminating this abuse of amateur radio? Will these OTA monitors actually work in practice?

Lor Kutchins has tightened the Terms of Service (TOS) of Winlink, and provided the "Winlink Viewer" which our team used to generate Enforcement Bureau Ticket # 3184322. When Lor Kutchins retires, will his successors be as thorough in their TOS policy?

Is there any guarantee the “Winlink Viewer” will continue to be available to the “PUBLIC”?

The FCC needs to ensure abuses of amateur radio stops, by revising applicable Part 97 rules.

C. CONCLUSION

Please revise the “Pizza Rule” FCC-94-111A1 as part of NPRM 16-239.

Please DENY RM-11708 and NPRM 16-239 and direct the ARRL to present a new practical petition, which includes all these matters, and provides a band plan that protects ALL users of amateur spectrum by segregating automatic from peer to peer operations.

Please also **use RM-11831**, to resolve important issues arising from NPRM 16-239.

Please revise and update FCC-94-111A1, 97.7, 97.105, 97.109, 97.113, 97.115, 97.219, 97.221, and 97.307(14) [to clarify that ACDS is NOT allowed in the 60 meter band], and 97.309 to eliminate the ambiguities that have been exposed in RM-11708, NPRM 16-239, and RM-11831.

In addition, there are long delayed multiple open amateur radio rule makings which need to be acted on in a timely fashion, in an FCC **Omnibus Report and Order**, to properly assemble all the pieces of this jig saw puzzle.

Please REJECT: RM-11759, RM-11829, RM-11828, RM-11826. **APPROVE:** RM-11785, RM-11767. **ADOPT, REJECT, OR DECLARE DORMANT:** RM-11834, RM-11835, RM-11775.

Respectfully submitted, /S/
Janis Carson, AB2RA